ADDITIONAL PAPERS

TO THE

COURT OF APPEALS

217

Notice of Appeal to the Court of Appeals from Order

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF SUFFOLK

In the Matter of the application for a review under Article 13 of the Tax Law of a Tax Assessment by GRUMMAN AIRCRAFT ENGINEERING CORPORATION,

Petitioner,

218

against

File No. 28906

THE BOARD OF ASSESSORS OF THE TOWN OF RIVERHEAD, NEW YORK, AND THE TOWN OF RIVERHEAD, a party by operation of law,

Respondents.

SIRS:

219

PLEASE TAKE NOTICE that Grumman Aircraft Engineering Corporation, the petitioner above named, hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, Second Judicial Department, made herein and entered in the office of the Clerk of the said Appellate Division on the 14th day of May, 1956, which said order reversed an order of the Supreme Court, Suffolk County, herein, which order was duly entered in the office of the Clerk of the County of Suffolk on the 9th day of January, 1956, denying the motion of the respondents to dismiss the peti-

220 *Notice of Appeal to the Court of Appeals from Order*

tion herein for insufficiency, finding that the assessments are illegal and directing respondents and all tax officials having jurisdiction thereof to strike the assessments from the assessment roll for the year 1955-56, and directed that said motion be granted, and the said petitioner appeals from each and every part of said order of reversal as well as from the whole thereof.

Dated: New York, New York
June 12, 1956.

221

CAHILL, GORDON, REINDEL & OHL
Attorneys for Petitioner
Office and P. O. Address
63 Wall Street
Borough of Manhattan
New York 5, New York

To:

THE CLERK OF THE COUNTY OF SUFFOLK
Riverhead, New York

REGINALD C. SMITH, ESQ.
Attorney for Respondents
222 137 West Main Street
Riverhead, New York

EDWIN S. LAPHAM, ESQ.
Attorney for Common School
Districts Numbers 1 and 2,
Town of Riverhead, *Amici Curiae*,
220 Roanoke Avenue,
Riverhead, New York

HORACE A. DEMAREST, JR., ESQ.
Attorney for Common School District
No. 4, Town of Riverhead, *Amicus Curiae*,
306 Roanoke Avenue
Riverhead, New York

Stipulation of Substitution of Attorneys

223

[Same Title]

It Is Hereby Stipulated, Consented and Agreed that Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, New York, be and they hereby are substituted in place and stead of Charles Kingsley, Esq., South Oyster Bay Road, Bethpage, New York as attorneys for petitioner, Grumman Aircraft Engineering Corporation.

224

Dated: Bethpage, New York
June 4, 1956.

Grumman Aircraft Engineering Corporation

By
E. Clinton Towl
Adm. Vice President

Charles Kingsley
Attorney for Petitioner,
Grumman Aircraft Engineering Corporation

225

Cahill, Gordon, Reindel & Ohl
Cahill, Gordon, Reindel & Ohl

To:

The Clerk of the County of Suffolk
Riverhead, New York

(Acknowledged by Grumman Aircraft Engineering Corporation before Joseph P. Kissling on June 4, 1956.)

226 **Order of Reversal Appealed From**

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department, at the Borough of Brooklyn, on the 14th day of May, 1956.

PRESENT HON. HENRY G. WENZEL, JR.,
Acting Presiding Justice
" GEORGE J. BELDOCK,
" CHARLES E. MURPHY,
227 " HENRY L. UGHETTA,
" PHILIP M. KLEINFELD,
Justices.

In the Matter of the application for a review under Article 13 of the Tax Law of a Tax Assessment by GRUMMAN AIRCRAFT ENGINEERING CORPORATION,
Respondent;

against

228 THE BOARD OF ASSESSORS OF THE TOWN OF RIVERHEAD, NEW YORK, AND THE TOWN OF RIVERHEAD, a party by operation of law,
Appellants.

The above named, the Board of Assessors of the Town of Riverhead, and the Town of Riverhead, a party by operation of law, respondents in this proceeding having appealed to the Appellate Division of the Supreme Court from an order of the

Supreme Court entered in the office of the Clerk of the County of Suffolk on the 9th day of January, 1956, denying said respondents' motion to dismiss the petition for insufficiency, finding that the assessments are illegal and directing appellants and all tax officials having jurisdiction thereof to strike the assessments from the assessment roll for the year 1955-1956, herein, and the said appeal having been argued by Mr. Reginald C. Smith of counsel for appellants, and argued by Mr. Charles Kingsley of counsel for respondent, Grumman Aircraft Engineering Corporation, and submitted by Mr. Edwin S. Lapham of counsel for Common School Districts Numbers 1 and 2, Town of Riverhead, as amicus curiae, and submitted by Mr. Horace A. Demarest, Jr., of counsel for Common School District No. 4, Town of Riverhead, amicus curiae, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed: 230

It Is Ordered that the order so appealed from be and the same hereby is reversed, without costs, and motion granted. 231

Beldock, Murphy, Ughetta and Kleinfeld, J.J. concur; Wenzel, Acting P.J. dissents and votes to affirm with memorandum as contained in opinion and decision slip herein, dated May 14th, 1956.

Enter:

J. J. Callahan,
Clerk.

232 **Opinion of Reversal**

[Same Title]

In a proceeding under article 13 of the Tax Law to review tax assessments, the appeal is from an order denying a motion to dismiss the petition for insufficiency, finding that the assessments are illegal, and directing appellants and all tax officials having jurisdiction thereof to strike the assessment from the assessment roll for the year
233 1955-1956. Title to the property was in the United States. Appellants based the assessment upon subdivision 17 of section 4 of the Tax Law which provides that where legal title to real property is in the United States, a tax assessment may be levied against the interest of an occupant or possessor thereof under an agreement whereby upon certain payment or payments legal title may be acquired by the occupant. The respondent was in possession under a lease containing an option to buy at a certain price in the event that the lessor, pursuant to other provisions of the lease, elected
234 to terminate the lease and dispose of the property as surplus. The order appealed from is based upon the determination that the statute involved applies only to a holder of equitable title in possession of property. Order reversed, without costs, and motion granted. The statute applies to an occupant in possession under any agreement whereby he may, upon certain payments, acquire legal title. The leasehold interest, including the option to buy at a certain price and under certain conditions, is a taxable interest under the statute. Beldock, Murphy, Ughetta and Kleinfeld, JJ., concur. Wenzel, Acting P.J., dissents and votes to affirm with the following memorandum: Real

property owned by the United States and in possession of a vendee under an executory contract of sale is taxable as real property (Tax Law, sec. 4, subdiv. 17; 68 N. Y. St. Dept. Rep. 425; S. R. A., Inc. v. Minnesota, 327 U. S. 558). The ownership by the United States would not bar local taxation of respondent's interest if the New York statutes made any provision for taxing such interest (U. S. Code, tit. 34, sec. 522c). Inter alia, the lease authorized the lessor to terminate the lease at any time during a declared national emergency or on ninety days' notice by the Secretary of the Navy whenever he determines that the interests of national defense so require. No title to the real property, legal or equitable, was in the respondent. It did not own the buildings nor did it have the right to remove them. The United States did not hold merely a naked legal title and a nominal interest (see e. g., United States v. Allegheny County, 322 U. S. 174, 187). Such interest as the respondent had was not taxable as real property (People ex rel. Int. Navigation Co. v. Barker, 153 N. Y. 98; People ex rel. Hudson River Day Line v. Franck, 257 N. Y. 69; 1949 Atty. Gen. 90; cf. People ex rel. Muller v. Board of Assessors, 93 N. Y. 308, and Dayton Development Ft. Hamilton Corp. v. Boyland, 133 N. Y. S. 2d. 831, aff'd — App. Div. 2d. —, Second Dept., decided April 30, 1956; see, e. g., Matter of Althause, 63 App. Div. 252, aff'd 168 N. Y. 670).

236

237

238

Stipulation Waiving Certification in the Court of Appeals

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing are true copies of the papers on appeal to the Appellate Division, Second Department, the Notice of Appeal to the Court of Appeals, the Stipulation of Substitution of Attorneys, the Order of Reversal Appealed From and the Opinion of Reversal, and all of the papers used upon the hearing of the appeal in the Court below and the whole thereof now on file in the office of the Clerk of
239 said Appellate Division and in the office of the Clerk of the County of Suffolk; certification thereof is hereby waived.

Dated, New York, N. Y., July 2, 1956.

CAHILL, GORDON, REINDEL & OHL,
Attorneys for Petitioner-Appellant

REGINALD C. SMITH,
Attorney for Respondents

240